UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,961	02/25/2004	David R. Clark	555255012729	4125

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EXAMINER
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ART UNIT	PAPER NUMBER
2617	

NOTIFICATION DATE	DELIVERY MODE
10/07/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 July 2010*.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *56-69* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *56-69* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.
5)☐ Notice of Informal Patent Application
6)☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1.   A request for continued examination under 37 CFR 1.114, including the fee set forth in

37 CFR 1.17(e), was filed in this application after final rejection. Since this application is

eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e)

has been timely paid, the finality of the previous Office action has been withdrawn pursuant to

37 CFR 1.114. Applicant's submission filed on July 21, 2010 has been entered. **Claims 1, 4-6,**

16, 48-50 and **53** has been cancelled and new **claims 56-69** has been added. **Claims 56-69** are

now pending in the present application.

Response to Arguments

2.   Applicant's arguments with respect to **claims 56-69** have been considered but are moot in

view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

3.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the
> subject matter which the applicant regards as his invention.

4.   **Claims 66** and **68** is rejected under 35 U.S.C. 112, second paragraph, as being indefinite

for failing to particularly point out and distinctly claim the subject matter which applicant

regards as the invention.

With respect to claim 66, applicant recites the limitation "the minimum amount" on lines

3-4 of claim 66, however there is insufficient antecedent basis for this limitation in the claim.

With respect to claim 68, applicant recites the limitation "the remote storage device" on

line 1 of claim 68, however there is insufficient antecedent basis for this limitation in the claim.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

5.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed
> in the United States before the invention by the applicant for patent or (2) a patent granted on an application for
> patent by another filed in the United States before the invention by the applicant for patent, except that an
> international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this
> subsection of an application filed in the United States only if the international application designated the United
> States and was published under Article 21(2) of such treaty in the English language.

6.   **Claims 56, 57, 62, 63, 64, 68** and **69** are rejected under 35 U.S.C. 102(e) as being

anticipated by **Gustafson et al., U.S. Publication Number 7,725,889 (hereinafter Gustafson)**.

Regarding claim 56, Gustafson teaches a method of updating a mobile device (*e.g.,*

mobile handset 107) having a baseline configuration stored (*e.g., an existing (old) update agent*)

in a mobile device memory (*111*) (see col. 3, lines 58-67, col. 4, lines 42-60 and figs. 1 & 2A),

comprising:

storing, in a memory (*111*) of the mobile device (*i.e., the mobile handset 107*), a baseline

mobile device configuration (*i.e., the existing (old) update agent*) (see col. 4, lines 51-54);

transmitting, from the mobile device to an update management computing device (*e.g.,*

management server 109), a request for update data (*i.e., reads on the mobile handset retrieves an*

update package from the management server) (see col. 3, lines 30-33), the update data including

an identification of a baseline mobile device configuration and an updated mobile device

configuration (*i.e., the update package contains information needed to upgrade*

software/firmware from one version to another) (see col. 3, lines 24-27);

receiving, at the mobile device (*107*), the update data (*i.e., the update package*) from the

update management computing device (*109*) in response to the transmitted request for update

data (*i.e., the mobile handset retrieving an update package from the management server*) (see

col. 3, lines 30-33);

in response to receiving the update data from the update management computing device,

storing the update data in the mobile device memory (see col. 3, lines 44-53); and

during initialization of the mobile device (see col. 4, lines 21-24 and fig. 2A; step 209):

evaluating the update data to determine whether it contains valid update data (see col. 3,

lines 58-62, col. 4, lines 21-32 and fig. 2A; step 211);

if the update data is determined not valid, then reverting to the baseline mobile device

configuration (*i.e., interpreted and read on the teaching that if the mobile handset determines*

that an update is not needed, a regular startup of the mobile handset may be initiated) (see col.

4, lines 28-32);

if the update data is determined valid (*i.e., if an updated is needed*),

prompting a selection between the baseline mobile device configurations and the updated

mobile device configuration (i.*e., reads on the teaching that if it is determined that the update*

agent needs to be updated, the mobile handset may determine which update agent should be

used: the updated update agent (new) or the old update agent that may be available in the

backup section of a memory) (see col. 4, lines 42-53 and fig. 2A; step 219);

accepting the updated mobile device configuration if the updated mobile device

configuration is selected (see col. 4, lines 56-60 and fig. 2A; step 219);

reverting to the baseline mobile device configuration if the baseline mobile device

configuration is selected (see col. 4, lines 54-67 and fig. 2A; step 225).

Regarding claim 63, Gustafson teaches a mobile device (*e.g., mobile handset 107*) (see

fig. 1) comprising: one or more processors (115 & 117); one or more memory locations (*111 &*

125); and update manager (*e.g., update agent 113*) software stored on the one or more memory

devices (111) and executable by the one or more processors (see col. 3, lines 44-51 and fig. 1),

when executed the update manager software being configured to:

store, in a memory (*111*) of the mobile device (*i.e., the mobile handset 107*), a baseline

mobile device configuration (*i.e., the existing (old) update agent*) (see col. 4, lines 51-54);

transmit, to an update management computing device (*e.g., management server 109*), a

request for update data (*i.e., reads on the mobile handset retrieves an update package from the*

management server) (see col. 3, lines 30-33), the update data including an identification of a

baseline mobile device configuration and an updated mobile device configuration (*i.e., the*

update package contains information needed to upgrade software/firmware from one version to

another) (see col. 3, lines 24-27);

receive the update data (*i.e., the update package*) from the update management

computing device (*109*) in response to the transmitted request for update data (*i.e., the mobile*

handset retrieving an update package from the management server) (see col. 3, lines 30-33);

in response to receiving the update data from the update management computing device,

store the update data in the mobile device memory (see col. 3, lines 44-53); and

during initialization of the mobile device (see col. 4, lines 21-24 and fig. 2A; step 209):

evaluate the update data to determine whether it contains valid update data (see col. 3,

lines 58-62, col. 4, lines 21-32 and fig. 2A; step 211);

if the update data is determined not valid, then revert to the baseline mobile device

configuration (*i.e., interpreted and read on the teaching that if the mobile handset determines*

that an update is not needed, a regular startup of the mobile handset may be initiated) (see col.

4, lines 28-32);

if the update data is determined valid (*i.e., if an updated is needed*) then,

prompt a selection between the baseline mobile device configurations and the updated

mobile device configuration (i.*e., reads on the teaching that if it is determined that the update*

agent needs to be updated, the mobile handset may determine which update agent should be

used: the updated update agent (new) or the old update agent that may be available in the

backup section of a memory) (see col. 4, lines 42-53 and fig. 2A; step 219);

accept the updated mobile device configuration if the updated mobile device

configuration is selected (see col. 4, lines 56-60 and fig. 2A; step 219);

revert to the baseline mobile device configuration if the baseline mobile device

configuration is selected (see col. 4, lines 54-67 and fig. 2A; step 225).

Regarding claims 57 and 64, Gustafson teaches all the limitations of claims 56 and 63. In

addition, Gustafson teaches a method, further comprising: determining, during initialization of

the mobile device, whether an update flag is set (*i.e., the availability of update packages may be*

recorded in status information that may be stored in memory of the mobile handset, and upon

initialization of the mobile handset, the mobile handset may determine whether there is a need to

execute the update agent based on the status information) (see col. 3, lines 52-62).

Regarding claims 62 and 69, Gustafson teaches all the limitations of claims 56 and 63. In

addition, Gustafson teaches a method, wherein the updating the mobile device with the received

update data further comprises copy-on-write of stored baseline configuration data stored into the

available memory of the mobile device (see col. 3, lines 52-55).

Regarding claim 68, Gustafson teaches all the limitations of claim 63. In addition,

Gustafson teaches wherein the remote storage device comprises the update management

computing device (see col. 3, lines 23-26 & 52-55 and fig. 1).

Claim Rejections - 35 USC § 103

7.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459

(1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1.   Determining the scope and contents of the prior art.
2.   Ascertaining the differences between the prior art and the claims at issue.
3.   Resolving the level of ordinary skill in the pertinent art.
4.   Considering objective evidence present in the application indicating obviousness
       or nonobviousness.

8.   **Claims 58** and **65** are rejected under 35 U.S.C. 103(a) as being unpatentable over

Gustafson et al., U.S. Publication Number 7,725,889 (hereinafter Gustafson) as applied to

claims 57 and 64 above, and further in view of **Chen et al., U.S. Publication Number**

2005/0114852 A1 (hereinafter Chen).

Regarding claims 58 and 65, Gustafson teaches all the limitations of claims 57 and 64,

but fails to explicitly teach if the update flag is not set, then reverting to the baseline mobile

device configuration; and if the update flag is set, then proceeding to the evaluating step.

In an analogous field of endeavor, Chen teaches when an electronic device is initialized,

an update status indicator is evaluated to determine whether an update package is present, if no

update package is present and/or no update is currently to be performed, the electronic device

may initiate normal operation (see p. 9 [0122]). Chen further teaches, if an update package is

detected based upon evaluation of the update status indicator, the update agent may be validated,

and if the update agent is determined to be valid, i.e., operable and/or un-corrupted, the update

may proceed to branch to the update agent, wherein the update may be performed (see p. 9

[0123]).

It would therefore have been obvious to one of ordinary skill in the art at the time of the

invention to modify Gustafson with the teachings of Chen, in order to indicate that a software

update is present and whether the software to be updated is valid and capable of being updated as

taught by Chen (see p. 1 [0012-0013]).

9.   **Claims 59-61, 66** and **67** are rejected under 35 U.S.C. 103(a) as being unpatentable over

Gustafson et al., U.S. Publication Number 7,725,889 (hereinafter Gustafson) as applied to

claims 56 and 63 above, and further in view of **O'Neill et al., U.S. Publication Number 2004/0068721 A1 (hereinafter O'Neill)**.

Regarding claim 59 and 66, Gustafson teaches all the limitations of claim 56 and 63, but fails to explicitly teach identifying data stored in a mobile device memory that may be purged to make available a minimum threshold amount of memory in the mobile device memory; determining whether the identified data is also stored on a remote storage device accessible by the mobile device over a communication; based on a determination that the identified data is not stored on the remote storage device, transmitting the identified data to the remote storage device for storage; and purging the identified data from the mobile device memory.

In an analogous field of endeavor, O'Neill teaches a download agent of a wireless communication device employs an upload agent to remove portions of existing software from non-volatile or volatile memory of a wireless communication device, in order to free up memory space for proper processing of downloaded software updates (see p. 5 [0044]). According to O'Neill, such removed portions of software may be selectively reinstated later, as necessary, in order to restore any functionality associated with the wireless communication device prior to an update process, and the removed portions may be temporarily stored remotely within other types of storage devices located within a distribution environment (see p. 5 [0044]). O'Neill further teaches reshuffling portions of existing software frees up memory space for effectively processing of downloaded software updates during the software update process (see p. 5 [0044]).

It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to apply the teachings of O'Neill to Gustafson for the purpose of realizing the aforesaid advantage.

Regarding claims 60 and 67, Gustafson in view of O'Neill teaches all the limitations of claims 59 and 66. Gustafson in view of O'Neill further teaches transmitting a request from the mobile device to the remote storage device for transmission of the identified data from the remote storage device to the mobile device; receiving the identified data from the remote storage device in response tot the transmitted request; and storing the identified data in the mobile device memory (see *O'Neill*, p. 5 [0044] and p. 6 [0049]).

Regarding claim 61, Gustafson in view of O'Neill teaches all the limitations of claim 60. Gustafson in view of O'Neill further teaches wherein the remote storage device comprises the update management computing device (see *Gustafson*, col. 3, lines 23-26 & 52-55 and *O'Neill*, p. 5 [0044]).

Conclusion

10.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Przybilski et al., U.S. Publication Number 2005/008522 A1 discloses software updating process for mobile devices.

11.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANTHONY S. ADDY whose telephone number is (571)272-7795. The examiner can normally be reached on Mon-Thur 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Patrick Edouard can be reached on 571-272-7603. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

like assistance from a USPTO Customer Service Representative or access to the automated

information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Anthony S Addy/
Examiner, Art Unit 2617